tion in each of those cases is whether or not, on the facts, the act done by the servant, albeit an unauthorised and wrongful act, is an act done in the course of the servant's employment. If it is done in the course of the employment the master is vicariously liable and, if it is not, the master is not liable.

On the evidence before him the trial judge found that although there was a distinct gap, as stated above, the lapse of time between the two incidents was so very short that for all intents and purposes the whole incident should be considered as one continuous event. This finding, which is a matter for the trial judge, disposes of the contention that the eye injury was caused by the conductor in the course of a private quarrel.

In our judgment there was sufficient evidence for the trial judge to come to the conclusion that the conductor in hitting the respondent on the eye was acting in the course of his employment albeit acting in a very high-handed manner. In our opinion on the facts of the present case the appellants have been rightly held to be vicariously liable for the assault committed by the conductor and we would accordingly dismiss the appeal with costs.

Appeal dismissed.

Solicitors: *Hilborne & Co.; Murphy & Dunbar.*

LAWRENCE AU POH WENG & ANOR. v. ANNIE TAN HUAY LIAN

[O.C.J. (Winslow J.) August 29, 1972]

[Singapore — Originating Summons No. 1 of 1972]

Practice and Procedure — Declaration — Jurisdiction of court — Application for bare declaration of marital status — R.S.C. 1970, O. 15 r. 16 — Ambit of rule — Costs.

The plaintiffs in this case, by originating summons, sought for two declarations regarding their marital status: "(1) a declaration that the first plaintiff is not married to the defendant; (2) a declaration that the first plaintiff is married to the second plaintiff;" followed by a claim for further or other relief and for provision as to the costs of the application. The defendant counterclaimed a declaration that she was the lawful wife of the first plaintiff.

The first plaintiff filed affidavits to show that he was not married to the defendant and that he was, in fact, married to the second plaintiff. The defendant filed affidavits to show that she was, in fact, married to the first plaintiff and was so married in Djakarta on which the plaintiffs relied to prove their marriage.

Held, dismissing the application: (1) the court had no jurisdiction to make the declarations asked for either by the plaintiffs or by the defendant;

(2) in all the circumstances of this case, the parties should bear their own costs.

Cases referred to:-

(1) *Woyno* v. *Woyno* [1960] 2 All E.R. 879.
(2) *Aldrich* v. *Attorney-General* [1968] 1 All E.R. 345 at 349.
(3) *Garthwaite* v. *Garthwaite* [1964] 2 All E.R. 233 at 239.
(4) *Guaranty Trust Co. of New York* v. *Hannay & Co.* [1915] 2 K.B. 536.
(5) *Re Lee Gee Chong, deceased* [1965] 1 M.L.J. 102.
(6) *Hanson* v. *Radcliffe* [1922] 2 Ch. 507.
(7) *Har-Shefi* v. *Har-Shefi* [1953] 1 All E.R. 783.
(8) *Kassim* v. *Kassim* [1962] P. 224.
(9) *Lee* v. *Lau* [1964] 2 All E.R. 248.
(10) *Collett* v. *Collett* [1967] 2 All E.R. 426.
(11) *In re Sir Lindsay Parkinson & Co. Ltd. Settlement Trusts* [1965] 1 W.L.R. 373.
(12) *Ibeneweka* v. *Egbuna* [1964] 1 W.L.R. 219 at 225.
(13) *Meyer* v. *Meyer* [1927] S.S.L.R. 1
(14) *Then Kang Chu* v. *Tan Kim Hoe* [1926] S.S.L.R. 1.

ORIGINATING SUMMONS.

Thio Su Mien for the plaintiff.

Tan Jin Hwee for the defendant.

Winslow J.: By this originating summons as amended on 15th March 1972 the plaintiffs claim two declarations as follows: —

(1) a declaration that the first plaintiff is not married to the defendant;

(2) a declaration that the first plaintiff is married to the second plaintiff;

followed by a claim for further or other relief and for provision as to the costs of the application.

This summons was served on the defendant who entered an appearance and a number of affidavits have been filed by and on behalf of the various parties. On the one hand, the first plaintiff has filed affidavits to show that he is not married to the defendant and that he is, in fact, married to the second plaintiff, whilst on the other hand the defendant has filed affidavits to show that she is, in fact, married to the first plaintiff and was so married at the time when he went through the form of marriage in Djakarta on which the plaintiffs rely to prove their marriage.

The undisputed facts are as follows: —

(1) in or about 1942, the defendant who was then the wife, according to Chinese customary rites, of Ang Ann Lian left her husband with the three children of their marriage to live with the first plaintiff;

(2) the marriage between the defendant and Ang Ann Lian was not dissolved. The marriage took place in 1930 and they became separated in 1939;

(3) from the commencement of cohabitation between the first plaintiff and the defendant, the defendant was introduced to their friends as Mrs. Au, *i.e.* as the wife of the first plaintiff;

(4) in August, 1956 Ang Ann Lian died and the defendant filed a caveat declaring her interest in his estate as his lawful widow;

(5) after August, 1956 the first plaintiff and the defendant continued to cohabit until 16th December, 1962 when he severed all relationship with her and proceeded to Indonesia where he married the second plaintiff at the Registry of Marriages in Djakarta on 28th December, 1962, *i.e.* in a matter of about a mere 12 days after leaving the defendant;

(6) it is undisputed that the first plaintiff and the defendant had a child, a girl named Vivian Au, who was born to their union in 1950. This girl unfortunately died in 1966.

The first and second plaintiffs now reside in Singapore, the first plaintiff claiming to be locally domiciled, whereas the second plaintiff is here on a visa which has been extended, from time to time, by grace of the immigration authorities, who I am told, now require a declaration of the court as to her marital status before they can consider granting her permanent residence in the country. They have a son named Clement, aged about nine, now living in Singapore and studying at one of our educational establishments.

The defendant, who also claims local domicile, is alleged to have made allegations to the Controller of Immigration that she is, in fact, married to the first plaintiff.

As counsel for the plaintiffs said in her opening address this is an unusual application. It is certainly unique because such an application as this in this form by way of originating summons supported only by affidavits and not by oral evidence, as agreed between counsel for both parties, has never been successfully brought before during the lifetime of alleged spouses such as these either in England or, more particularly, in Singapore and Malaysia where one would have expected such cases to arise for determination in one form or another. It is true that in England in *Woyno* v. *Woyno*[1] Mr. Commissioner Edgedale, Q.C., sitting in the Probate, Divorce and Admiralty Division of the High Court, granted a declaration under Order 25 rule 5 (the equivalent of our Order 15 rule 16) for the first time in England, apparently, that the petitioner's marriage therein to the respondent was valid. It should be noted however that that declaration, albeit under Order 25 rule 5, was made on a petition in that division of the High Court of England exercising jurisdiction in matrimonial causes. Section 17 of the Matrimonial Causes Act, 1950 which repealed and substantially re-enacted the Legitimacy Declaration Act of 1858 (and is now substantially section 39 of the Matrimonial Causes Act, 1965) expressly provided for the court to make declarations of the legitimacy and the validity of the marriage of a petitioner but it is not clear from the reported judgment of the Commissioner that this provision of the Matrimonial Causes Act of 1950 was drawn to his attention and no reasons are given for his conclusion. However, it would seem that there was no dispute between the parties as to their marriage, the only question being whether the petitioner/husband was a bachelor when he married the respondent/wife so as to enable the Home Office to grant her a certificate of naturalization as a British subject. I am not sure that that case was decided on correct principles.

Ormrod, J. made the following observations on the position in *Aldrich* v. *Attorney-General*: —[2]

"This brings me to counsel for the Attorney-General's principal point which, I am ashamed to say, is quite new to me. He has drawn attention to the provisions of s.21 of the Supreme Court of Judicature (Consolidation) Act, 1925 which is in the following terms:

'The High Court shall have such jurisdiction — (a) in relation to matrimonial causes and matters, as was immediately before the commencement of the Matrimonial Causes Act, 1857, vested in or exercisable by any ecclesiastical court or person in England in respect of divorce *a mensa et thoro*, nullity of marriage, jactitation of marriage, or restitution of conjugal rights, and in respect of any matrimonial cause or matter except marriage licences; and (b) with respect to declarations of legitimacy and of validity of marriage, as is hereinafter in this Act provided...'

It is, of course, para. (b) of this section which is directly in point in this case. Most unfortunately, this section was not brought to the attention of the Court of Appeal in *Har-Shefi* v. *Har-Shefi* or in *Garthwaite* v. *Garthwaite*...

The effect of this section on the present case is clearly of the greatest importance. Paragraph (b) lays down in express terms that the court shall have such jurisdiction with respect to declarations of legitimacy 'as is hereinafter in this Act provided'. This is, of course, a reference to s. 188 of the Act of 1925 which became, with minor amendments, s. 17 of the Matrimonial Causes Act, 1950, and s. 39 of the Act of 1965. I find it quite impossible to construe this section as meaning that the court has also a jurisdiction to grant declarations of legitimacy under the Rules of the Supreme Court. If this were the effect of the rule it would be inconsistent with the section. Moreover, the section itself is subsequent in date to the rule, and it is not a mere re-enactment of a provision in an earlier Act. In my judgment, the principle *'expresso unius est exclusio alterius'* must apply, with the result that the jurisdiction of the court in this connexion is limited to cases falling within the provisions of s. 39 of the Act of 1965." (The underlining is mine.)

Furthermore, as Wilmer, L.J. said in *Garthwaite* v. *Garthwaite*: [3]

"In my judgment a suit for a bare declaration as to the subsistence of a marriage, if it is competent at all, is competent only because it is within the matrimonial jurisdiction of the High Court to grant such a declaration. The High Court exercising its matrimonial jurisdiction is the only court competent to grant binding declarations as to matrimonial status."

It should be observed that Willmer L.J. said earlier in the same case at page 238B:

"The contention of the wife is and must be based on R.S.C. Ord. 15, r. 17 to which I have already referred, and which is made applicable to matrimonial causes by r. 82 of the Matrimonial Causes Rules, 1957. In considering the application of this rule, I am disposed to agree with the view expressed by the judge that no assistance is to be derived from *Countees De Gasquet James* v. *Duke of Mecklenburg-Schwerin*, since that case was decided before the Rules of the Supreme Court were made applicable to matrimonial causes. R.S.C., Ord. 15 r. 17 (or rather its predecessor, Ord. 25 r. 5 of the old rules) has been considered in a number of cases, and it is well established that the rule relates only to practice and procedure, and cannot be construed so as to create a jurisdiction which does not otherwise exist." (The underlining is again mine).

However, Willmer L.J. at page 239I to page 240C said:

"It is, of course, correct that a suit for a bare declaration, such as the present does not fall within the categories of suit included in the definition of 'matrimonial cause' in section 225 of the Supreme Court of Judicature (Consolidation) Act, 1925; but I think that it is to be pointed out that the declaration sought in the present case is substantially that which would be appropriate to a suit for restitution of conjugal rights. I am prepared to assume that R.S.C., Ord. 15, r. 17, authorises the making of such a bare declaration notwithstanding that no decree of restitution is actually sought. However, if I correctly understand what was said by Pickford, L.J., and Bankes, L.J., in the *Guaranty Trust Co.* case, a declaratory judgment is a form of relief which can be granted only in accordance with the accepted principles on which the court might have exercised its jurisdiction to grant the larger relief. In the present case, on the averments in the petition as they stand, the court could not have jurisdiction to grant a decree of restitution. As already pointed out, if the wife had alleged desertion against the husband, jurisdiction to grant a decree of restitution would no doubt have existed under section 18(1)(a) of the Matrimonial Causes Act, 1950. The wife, however, has elected not to invoke this section, though afforded an opportunity

to do so by way of amendment during the hearing of the appeal. In these circumstances, since there is no jurisdiction to grant a decree of restitution, I do not think that jurisdiction exists to grant the declaration which would have been ancillary thereto." (The underlining is mine.)

It should be noted that Order 15 rule 17 in the judgment cited corresponds to our Order 15 rule 16.

It should also be noted that, though this matter was raised before the Court of Appeal on which Willmer L.J. sat, it was not argued and the observations appear to be mere *obiter*. Assuming that the Court of Appeal was right in *Garthwaite's* case in assuming that jurisdiction would exist to make a bare declaration under the equivalent of our Order 15 rule 16, provided matrimonial jurisdiction exists, *e.g.* to grant a decree for the restitution of conjugal rights, it is highly doubtful whether the English courts would grant a bare declaration in the air, so to speak, in the absence of a claim to relief, given its fullest meaning, *i.e.* relief which as Bankes L.J. stated in *Guaranty Trust Co. of New York* v. *Hannay & Co.*[4] "would not be unlawful, or unconstitutional or inequitable for the court to grant or contrary to the accepted principles upon which the court exercises its jurisdiction."

As Ormrod J. pointed out at page 350A in the *Aldrich* case already cited, the Court of Appeal's attention in *Garthwaite's* case was not drawn to section 21 of the 1925 Act which lets in section 17 of the Matrimonial Causes Act, 1950. The matter would therefore seem to be still open to argument and decision by the English Court of Appeal whether jurisdiction would exist to make a bare declaration on the validity of a marriage or legitimacy in the absence of the jurisdiction conferred by section 39 of the Matrimonial Causes Act, 1965. Ormrod J. thought that it did not, in the *Aldrich* case.

It is well settled, I think, that until the advent of the Women's Charter in Singapore, making monogamy the order of the day, all Chinese marriages which previously had been regarded as polygamous have been recognised as valid marriages, for certain purposes, whether as marriages with a principal wife or with a secondary wife or with both, provided that as a matter of evidence consensual marriage could be proved. Although in most cases there would have been some form of ceremony, this has been held not to be essential, so long as there is satisfactory evidence of mutual consent, cohabitation and repute sufficient to prove a consensual marriage.

The authorities cited on behalf of the defendant are not disputed, particularly the decision in *Re Lee Gee Chong, deceased*[5] which reviews the preceding authorities on the subject including a number of cases which went to the Privy Council.

As I have said, not only is this a unique case, it is also almost without precedent so far as the procedure taken to test the matter before the High Court is concerned, but see later in this judgment. It was not until I asked for a special date to be fixed, in order to determine the question of the court's jurisdiction to make declarations of the kind asked for, that any reference was made at all to Order 15 rule 16 which reads as follows:

"No action or other proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the court may make binding declarations of right whether or not any consequential relief is or could be claimed.",

and it was agreed that, although the terms of this rule appear to be unlimited, the grant of any such declarations as required would be entirely in the discretion of the court, assuming, of course, that the court had the authority in the first instance to make the declarations.

It was submitted on the authority of *Hanson* v. *Radcliffe*[6] that the power to make declarations was almost unlimited, only limited by the court's own discretion and that as Russell J. said:

"In my opinion, under Order XXV., r. 5 the power of the court to make a declaration, where it is a question of defining the rights of two parties, is almost unlimited; I might say only limited by its own discretion. The discretion should of course be exercised judicially, but it seems to me that the discretion is very wide."

Clearly, the jurisdiction of the courts in divorce and matrimonial causes under Part IX of the Women's Charter is not being invoked herein nor has one of the parties died so as to require any question of inheritance or the proper devolution of property to be determined in any manner depending for its determination on the existence or validity of any marriage. The point for determination seems quite a simple and straightforward one involving mainly considerations of fact. One would have thought that, if the defendant considered herself to be married, within the meaning of consensual marriages as recognised in these courts, she could have instituted proceedings for maintenance in the first place as a wife who had been neglected and proceeded with her claim for maintenance which would have required the court, prescribed under Part VII of the Women's Charter, to decide whether she was married to the first plaintiff in the first instance or she could have proceeded to petition the High Court under section 98 of the Women's Charter for restitution of conjugal rights or invoked some other provision of that Charter. She did none of these things nor, so far as the record shows, did she make any complaint of bigamy.

If, in fact, the first plaintiff, as she says, left her on 16th December, 1962 without a word of explanation and brought his cohabitation with her to an end after having lived with her as man and wife in the eyes, not only of his friends, but also of his own close relatives, including his brother, who left a will in which he described the defendant as his sister-in-law, *i.e.* as the wife of the first plaintiff, one would have thought that she could have initiated action a long time ago instead of doing nothing in the matter at all through the courts until the plaintiffs brought her to this court. I do not know what the reason is for her inaction nor has one been given.

All she seems to have done, according to the affidavits before me, is to have made allegations to the Controller of Immigration that she was the first plaintiff's wife. This seems to have somewhat perturbed the controller who has referred the plaintiffs to the courts for a decision on their marital status.

In view of the controller's attitude, the first and second plaintiffs, no doubt as advised, have come to the High Court for the declarations they now ask for and, of necessity, they have had to serve the papers relating to the originating summons on the defendant who, otherwise, may never have come before the courts or entered the judicial picture at all.

It is not as if the defendant initiated action in the first instance apart from whatever allegations she may have made to the controller about her own status in the matter. Having succeeded in being brought into the picture in this round-about manner, the defendant now counterclaims that she is married to the first plaintiff. I appreciate that section 66 of the Women's Charter provides that the High Court shall have the jurisdiction and powers which belong to and are exercisable by any district or magistrate's court under Part VII in respect of a claim for maintenance by a married woman. No claim has however been made to this court under the provisions of section 60 by the defendant. I gave leave on 5th April 1972 to the defendant to counterclaim for a declaration that she is married to the first plaintiff and for consequential relief but it does not follow that, if I dismiss the counterclaim for a declaration, I can exercise the powers conferred by section 66.

Having considered the matter carefully, in the light of all the authorities, particularly in relation to the question of the court's jurisdiction, I am of the opinion that the court has no jurisdiction in the strict sense of the term to make the declarations asked for either by the plaintiffs or by the defendant.

I am fortified in the conclusion I have reached, for one reason because of what seems to me to be the existing position in similar matters in England. (See, in addition to the cases of *Woyno, Garthwaite*, and *Aldrich* already cited, *Har-Shefi* v. *Har-Shefi*,[7] *Kassim* v. *Kassim*,[8] *Lee* v. *Lau*[9] and *Collett* v. *Collett*[10]). In *Collett* v. *Collett*, Ormrod J. stated positively that a declaration of the validity of a marriage could not be made under Order 15 rule 16 if the petitioner was capable of proceeding by petition under section 39 of the Matrimonial Causes Act, 1965.

I have taken pains to examine the position in England in order to satisfy myself that proceedings for declarations in matrimonial matters have not easily found favour there when brought under the guise of claims for declaratory judgments or for declarations of binding right under Order 15 rule 16, and it seems reasonably clear that the present position is that the High Court in England is not competent to make a bare declaration under Order 15 rule 16 regarding the validity or continued subsistence of a marriage even between English domiciled spouses unless matrimonial jurisdiction can be shown to exist in the first place, or, as Ormrod J. said, if he is right, unless the petitioner is capable of proceeding under section 39 of the Matrimonial Causes Act, 1965. Rule 82 of the Matrimonial Causes Rules, 1967 (like rule 64 of our Divorce Rules, 1950), relating as it does only to practice and procedure, cannot be construed to create a jurisdiction which does not otherwise exist so as to confer jurisdiction on the High Court to make the kind of declarations under Order 15 rule 16 claimed by the plaintiffs in the present case.

Before I turn to the position in Singapore in regard to these matters I must record my disappointment that the question of jurisdiction was not more thoroughly canvassed at an earlier stage, much as I appreciate the desire of the parties to obtain a rapid and convenient solution to their problems. This is the one kind of case where, if only because of its rarity or novelty, it was most important that consideration should, first of all, have been given to the important question of jurisdiction even before any question could arise as to whether an originating summons or a writ was the proper means by which the case should have been brought to court for determination of the issues raised. It is clear that where contentious issues of fact are likely to be involved an originating summons is not a reasonable mode of commencing proceedings even though Order 5 rule 4 empowers a plaintiff to institute proceedings either by originating summons or by writ. This case involved a large area of undisputed fact but the most crucial fact for determination was the question whether the first plaintiff and the defendant, in 1956, after the death of Ang Ann Lian, mutually intended their relationship to continue as that of man and mistress as when he was alive or to become altered to one of man and wife as they had all along led some of their friends and relatives to believe they were by virtue of their cohabitation from 1942 to 1962 which includes the period between 1956 and 1962.

It was most desirable (see *In re Sir Lindsay Parkinson & Co. Ltd. Settlement Trusts*[11]) that in view of the dispute over this important issue of fact a writ should have commenced these proceedings, once the question of jurisdiction had been carefully canvassed before hand in order to enable the plaintiffs to satisfy the court that it had the nceessary jurisdiction to make a bare declaration under Order 15 rule 16. Such a declaration would at most be binding between the parties and would not be a judgment *in rem* on which ancillary relief such as that for maintenance could be founded. I was aware that I could have acted under Order 28 and required the parties to proceed with the originating summons as if the matter had been begun by writ but I refrained from doing so in order to avoid waste of time, effort and expense on the part of all concerned until such time as I could be satisfied that the High Court had jurisdiction, in the first place, to grant the declarations required, and by jurisdiction I do not mean the discretion, in the second sense in which Bankes L.J. described the term in the *Guaranty Trust* case, but the authority, in the stricter sense of the expression "jurisdiction", which enables such a discretion in a proper case to be exercised judicially and "with a proper sense of responsibility and a full realisation that judicial pronouncements ought not to be issued unless there are circumstances that call for their making" (Viscount Radcliffe in *Ibeneweka* v. *Egbuna*[12]).

All this effort, assuming I am right in this judgment, would not have been wasted if the question of jurisdiction had been considered carefully first, even before proceedings were instituted at all.

Since the last day of hearing in May last, I have been compelled to indulge in considerable research on my own in the absence of assistance from counsel on this most crucial matter relating to jurisdiction in matrimonial matters. Both counsel seemed to assume that the court had a wide discretion in the matter and left it at that! I might add that a study of all the cases cited in the latest *White Book* relating to Order 15 rule 16 is also of little assistance in relation to matrimonial matters. It was only after reference to the Matrimonial Causes Acts that I discovered the cases to which I have referred earlier — apart from the *Har-Shefi* case. Incidentally, it was through a case involving the validity of Jewish divorces in Singapore (*Meyer* v. *Meyer*[13]) that I was able to trace the case of *Then Kang Chu* v. *Tan Kim Hoe*[14] which seems to provide an almost complete answer to this originating summons.

The headnote therein reads, "The Legitimacy Declaration Act of 1858 is not law in the Colony. The Supreme Court has no jurisdiction to entertain a suit for a declaration of the validity of a marriage; and no jurisdiction to entertain an application under section 38 of Ordinance No. 96 (Minor Offences) except by way of appeal or revision." (Section 38 under reference is similar to our present section 60 of the Women's Charter relating to maintenance of wives and children.)

Then's case, of course, proceeded on the basis whether, in 1925, the Legitimacy Declaration Act, 1858 applied in the then Colony of the Straits Settlements and the Court of Appeal held that it did not. This Act, as I have said earlier, was repealed and substantially re-enacted by section 17 of the English Matrimonial Causes Act, 1950 which was later reproduced substantially in section 39 of the Matrimonial Causes Act, 1965. The Act of 1858 provided for a British subject domiciled in England or Ireland, or claiming any real or personal estate in England to petition the Court for Divorce and Matrimonial Causes, *inter alia*, for "a decree declaring that his marriage was or is a valid marriage..." Acton J. even went so far as to say that it was unnecessary to consider the argument that the Act was in force in the Colony since he was unable to understand how a person not domiciled in England or Ireland but in Singapore could be said to be authorised to take proceedings under that Act. Deane J. and Brown J., while holding expressly that the Act did not become part of the law of the Colony, were also of the same view with regard to the plaintiff's lack of qualifications under the Act even if it could be said to be in force in Singapore.

In the course of the judgments of the Court of Appeal, reference was made to the provisions of various Ordinances relating to the jurisdiction of the Supreme Court in 1878 and 1907 with a view to ascertaining whether the jurisdiction conferred by the Legitimacy Declaration Act 1858 had become vested in the courts of the Colony so as to make it applicable here *via* the Charters of Justice of 1826, if not of 1855, and it was finally held that the Act of 1858 was not law in the Colony and that the courts had no power to enforce it. The Court of Appeal accordingly held that the High Court had no jurisdiction to make a declaration establishing the validity of the marriage which the plaintiff claimed existed between her and the defendant in that case. Surprisingly, the question of jurisdiction had not been raised at the trial in the High Court.

It is interesting to note that she had claimed maintenance before a magistrate, earlier, against the defendant as her husband and the magistrate, after hearing the defendant, refused to make any order for maintenance on the ground that she had failed to prove that she was his wife. For some reason which is not clear, she did not appeal against the magistrate's order and brought a suit in the High Court for the declaration aforesaid.

It remains for me to say that there is nothing in the Supreme Court of Judicature Act (Cap. 15) which confers on the High Court any civil jurisdiction which can assist the plaintiffs in obtaining the declarations they seek. The civil jurisdiction of the High Court includes jurisdiction under any written law relating to divorce and matrimonial causes. The High Court, generally, also has such jurisdiction as is vested in it by any written law which is in force in Singapore. In 1926, as the law then stood, *Then's* case decided that the court lacked jurisdiction to make declarations establishing the validity of marriages since the Legitimacy Declaration Act, 1858 was not then in force in Singapore. Nothing seems to have occurred since 1926 by way of special legislation or otherwise to make it part of Singapore law. There is nothing in the Women's Charter or the Legitimacy Act (Cap. 44) giving jurisdiction in this respect. So far as my searches show, there is no provision similar to section 39 of the Matrimonial Causes Act, 1965 in force in Singapore and none has been drawn to my attention.

It follows that the claim by the plaintiffs and the counterclaim by the defendant must be dismissed for lack of jurisdiction in this court to make the declarations required.

I should like to assure counsel that I am not unappreciative of the researches that they have done in the direction of showing how the actual existence or non-existence of a marriage which the courts here would recognise as a consensual marriage can be proved. I regret the fact that this court is barred from exercising any jurisdiction in the matter. The Controller of Immigration may find some solace in reflecting that, despite what may seem to be vagaries of the law, there is actually vested in him a discretion which he should be able to exercise without having to await any judicial pronouncement on the subject. The onus of proving her marriage to the first plaintiff — which is disputed by him as never having come into being as such at all — is on the defendant. There is no dispute about the solemnisation of the second plaintiff's marriage to the first plaintiff which is *prima facie* a marriage which the courts here can recognise as a valid marriage solemnised as it was as a monogamous marriage by the registrar in Djakarta. Until and unless the defendant is able to discharge the onus on her of showing that that marriage is void it must be regarded as a valid marriage especially as she seems to have made no complaint of bigamy or otherwise taken action through the courts to challenge the validity of

that marriage for nearly ten years. Although I have been unable to make the declarations asked for because of lack of jurisdiction there is little doubt what I would be inclined to do, in the absence of any explanation of her inaction as aforesaid since 1962, if the courts had jurisdiction to make bare declarations under Order 15 rule 16 as to the validity of such marriages.

In all the circumstances the proper order in respect of costs should, I think, be that the parties should bear their own costs.

Order accordingly.

Solicitors: *Chor Pee & Hin Hiong; Murphy & Dunbar.*

MALAYSIAN REPORTS

PUBLIC PROSECUTOR v. JOSEPH CHIN SAIKO

[A. Cr. J. (Lee Hun Hoe J.) October 5, 1971]

[Kota Kinabalu — Criminal Appeal No. 6 of 1971]

Penal Code, s. 304A — Causing death by a rash or negligent act — Standard in measuring rashness or negligence — Same as for charge under s. 14(1) of Road Traffic Ordinance (Cap. 128) — Lack of degree of care and attention that a reasonable and prudent driver would exercise in the circumtances.

This was an appeal against the acquittal of the accused on a charge under section 304A of the Penal Code. The accused had been charged on two charges, one under section 304A of the Penal Code and the other under section 14(1) of the Road Traffic Ordinance. The learned stipendiary magistrate found the accused guilty on the second charge but acquitted him on the charge under section 304A of the Penal Code as he held that the prosecution had not proved the substantially high degree of negligence required to warrant a conviction under that section.

Held, allowing the appeal: the magistrate had misdirected himself on the degree of negligence required to substantiate a charge under section 304A of the Penal Code. The degree of negligence is the same as that required on a charge under section 14(1) of the Road Traffic Ordinance, that is, the lack of degree of care and attention that a reasonable and prudent driver would exercise in the circumstances.

Cases referred to:

(1) *Public Prosecutor* v. *P. G. Mills* [1971] 1 M.L.J. 4.
(2) *Cheow Keok* v. *Public Prosecutor* [1940] M.L.J. 103.
(3) *Lai Tin* v. *Public Prosecutor* [1939] M.L.J. 248; [1938] F.M.S.L.R. 290.
(4) *Woo Sing & Anor* v. *R.* [1954] M.L.J. 200.
(5) *Mah Kah Yew* v. *Public Prosecutor* [1971] 1 M.L.J. 1.
(6) *Re Lee Gee Chong, decd.* [1965] 1 M.L.J. 102.
(7) *China Insurance Co. Ltd.* v. *Loong Moh Co. Ltd.* [1964] M.L.J. 307, F.C.
(8) *K. E. Mohamed Sultan Maricar* v. *Prudential Assurance Co. Ltd.* [1941] M.L.J. 20.
(9) *Hendry* v. *De Cruz* [1949] M.L.J. Supp. 25.
(10) *Butler Madden* v. *Krishnasamy* [1947] M.U.L.R. 163.
(11) *Anthonysamy* v. *Public Prosecutor* [1956] M.L.J. 247.
(12) *Dabholkar* v. *The King* [1948] A.C. 221.
(13) *Tan Kim Chang* v. *R.* [1953] M.L.J. 186.
(14) *John Liau* v. *Public Prosecutor* (Jesselton Criminal Appeal No. 22 of 1966; unreported).
(15) *R.* v. *Lucas bin Daim* (High Court, Papar, Crim. App. C. No. 0/57 of 1959; unreported).
(16) *Ellen Joyce Kay* v. *R.* (High Court, Jesselton, Crim. App. C. No. A/3 of 1963; unreported).
(17) *Kuan Choon Hin* v. *Public Prosecutor* [1940] M.L.J. 114.
(18) *Voo Yun Fatt* v. *R.* [1957] S.C.R. 127.
(19) *Simpson* v. *Peat* [1952] 1 All E.R. 449.
(20) *Bourhill* v. *Young* [1943] A.C. 92.

MAGISTRATE'S CRIMINAL APPEAL.

Joseph Kitingan (Deputy Public Prosecutor) for the appellant.

Shelley Yap for the respondent.

Lee Hun Hoe J.: This is an appeal by the learned Public Prosecutor against an acquittal order made by the learned stipendiary magistrate in respect of the first count concerning an offence under section 304A of the Penal Code. The second count was concerned with an offence under section 14(1) of the Road Traffic Ordinance (Cap. 128). On this count the respondent was convicted and sentenced to a fine of $350